



An
Bord
Pleanála

Inspector's Report ABP-313153-22

Development	Construction of house
Location	Rehy East , Cross , Co Clare
Planning Authority	Clare County Council
Planning Authority Reg. Ref.	21971
Applicant(s)	Jack Roest.
Type of Application	Permission
Planning Authority Decision	Refusal
Type of Appeal	First Party
Appellant(s)	Jack Roest
Observer(s)	None.
Date of Site Inspection	14/02/2023
Inspector	Adrian Ormsby

1.0 Site Location and Description

- 1.1. This appeal site is located in the townland of Rehy East, approximately 3.6km to the south west of Carrigaholt on the Loop Head peninsula in Co. Clare. The site is located on the southern side of a local road approximately 600m north of the coastline and c. 5-600m west of Rinevella Bay. The site is located c. 2km south of the R487 Regional Road
- 1.2. The site has a stated area of 0.49 hectares with a mature roadside boundary bund with hedgerow. There is an agricultural style entrance to the northwest corner of the site. The site is relatively flat in appearance but falls gradually in a southerly direction. There is significant vegetation including reed growth throughout the site with evidence of rocks and stones dispersed in areas. On the day of the inspection the ground conditions were generally firm underfoot.
- 1.3. There are a number of one-off style dwelling houses in the area with the two to the immediate west of the site being single storey in appearance with first floor space and single storey.

2.0 Proposed Development

- 2.1. The application comprises off-
 - a dwelling house (201.8 sq.m),
 - vehicular entrance, recessed front boundary,
 - foul sewer treatment system and percolation area and
 - ancillary site works

3.0 Planning Authority Decision

3.1. Decision

The Planning Authority decided to refuse permission on the 03/03/22 for five reasons-

1. *The subject site is located in the countryside, within the 'Area of Special Control', which is a 'Heritage Landscape', where it is an objective of the Clare County Development Plan 2017-2023, as varied, as set out under Development Plan Objective CDP 3.11, to permit a new single house for the permanent occupation of an applicant subject to demonstrating compliance with the "local rural person", "local rural area and 'local rural housing need' criteria. Based on the information received with the application, the Planning Authority considers that the applicant does not comply with the criteria as set out in CDP 3.11 of the Plan. Accordingly the proposed development would materially contravene an objective of the 2017- 2023 Clare County Development Plan, as varied, and would conflict with the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities published by the Department of the Environment, Heritage and Local Government in April, 2005. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.*
2. *Having regard to the provisions of the Code of Practice issued by the Environmental Protection Agency "Code of Practice for Domestic Waste Water Treatment Systems (Population Equivalents 10) (2021)", it has not been demonstrated to the satisfaction of the Planning Authority that wastewater generated within the site can be treated or dispersed on this site in a manner that would not result in environmental pollution. It is considered therefore that the proposal would conflict with Policy Objective CDP 8.27 of the Clare County Development Plan 2017-2023, as varied, and with the provisions of the Code of Practice of the Environmental Protection Agency, would represent an unacceptable risk of pollution to the environment due to potential impacts on groundwater and on the surface water network, and would therefore be prejudicial to public health.*
3. *The subject site is located within a Heritage Landscape, as designated in the Clare County Development Plan 2017-2023, as varied. Having regard to the prominent coastal location of the site, where natura screening is limited, it is considered that the proposed development would seriously injure the visual amenities of the landscape, the protection of which is an objective of the Planning Authority as expressed under CDP13.5 in the Clare County*

Development Plan, 2017-2023, as varied, and therefore, would be contrary to the proper planning and sustainable development of the area.

4. *Having regard to the nature of the works and the available information, the Planning Authority is not satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lower River Shannon SAC, in view of the conservation objectives of the site, and in such circumstances, the Planning Authority is precluded from granting planning permission. Therefore the proposed development would contravene development objectives CDP14.2 and CDP14.3 of the Clare County Development Plan 2017-2023, as varied, and would therefore be contrary to the proper planning and sustainable development of the area.*
5. *Having regard to the documentation submitted with the application, the Planning Authority is not satisfied that the roadway entrance is adequate in terms of traffic safety due to the lack of adequate sight distances along the road, and as such the proposed development is likely to endanger public safety by reason of traffic hazard, and therefore would be contrary to the proper planning and sustainable development of the area.*

4.0 Planning Authority Reports

4.1. Planning Reports

- 4.1.1. A Planners Report dated 04/11/22 recommended refusal for five reasons in line with the above. The applicants sought an extension of time on the 05/11/21 up to and including the 05/03/22. The council permitted same. Additional information to address the refusal reasons was submitted by the applicants on the 03/03/2022. A second planners report dated 03/03/22 reflects the overall decision of the Planning Authority.
- 4.1.2. The following is noted from both planning reports-
 - The site is located within a 'Heritage Landscape' and therefore is within an 'Area of Special Control' as per the Development Plan.

- The applicant has not adequately demonstrated he is a 'Local Rural Person' or has lived in the 'Local Rural Area' or has a 'Local Rural Housing Need' in accordance with the Development Plan requirements
- The Councils Engineer's report seeks 90m sight distance which has not been achieved in the submitted drawings.
- The report of the Councils Environment section indicates the site is not suitable when assessed under the 2009 or 2021 EPA CoP.
- The design would impact negatively on the visual amenities of the area.
- Given the sites proximity to European Sites and the inadequate proposal for wastewater treatment and disposal an appropriate assessment screening report would be required. Based on information submitted it was not possible to screen out potential significant negative impacts.
- The additional information submitted by the applicant after the Time extension indicates the applicant owned a house and does not comply with policy objective CDP 3.11.
- The information in relation to wastewater treatment does not provide new data and the findings are not different to the initial assessment.
- The revised drawings submitted show the same finished floor level as originally proposed and the claim the house is reduced by 2.1m is not reliable.
- Concerns over the potential impacts to European Sites remain.
- 90m sightlines from the entrance are required.

4.2. Other Technical Reports

- West Clare Municipal District
 - 08/10/2021- Further Information sought in relation to sightlines and surface water drainage at the entrance
- Environment Section-
 - 02/11/21- Soil variance evident on site with uncharacteristic percolation results. Refusal recommended

4.3. Prescribed Bodies

- Irish Water- No objections

4.4. Third Party Observations

- None

4.5. Representations

- Councillor Cillian Murphy 06/10/21

5.0 Planning History

This Site-

- 09/102- Permission **refused** for a house 28/04/09 for one reason-
 - Site not suitable for safe disposal and treatment of wastewater.

Adjoining Site-

- 011585 Permission **granted** for house to Jack & Corinna Roest 16/05/02

6.0 Policy Context

6.1. National Planning Framework (NPF)

6.1.1. Objective 19 of the NPF states-

Ensure, in providing for the development of rural housing, that a distinction is made between areas under urban influence, i.e. within the commuter catchment of cities and large towns and centres of employment, and elsewhere:

- *In rural areas under urban influence, facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area and siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements*

- *In rural areas elsewhere, facilitate the provision of single housing in the countryside based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.*

6.2. Ministerial and Other Guidelines

6.2.1. Sustainable Rural Housing Guidelines for Planning Authorities (2005) (SRHG)

- The Appeal site is located in an area that can be described as fitting within a 'Rural Area Type' identified in section 3.2 as 'Areas with clustered settlement patterns'. Areas with these characteristics are generally described as associated with the western seaboard of counties such as Clare where there are comparatively fewer village or smaller town type settlements compared with other rural areas; instead there tends in those areas to be a prevalence of housing clusters, groups of clusters and occasionally linear development.
- Section 3.2.3 deals with 'Rural Generated Housing' and describes examples that should be included in the development plan illustrating the broad categories of circumstances that would lead the planning authority to conclude that a particular proposal for development is intended to meet a rural generated housing need. Examples include-
 - *Persons who are an intrinsic part of the rural community*
 - *Persons working full-time or part-time in rural areas*
- Section 3.2.3 concludes that-

“Each planning authority should make its assessment of the scope and extent of rural housing needs to be considered in its development plan having regard to the framework outlined above.....

Having defined rural generated housing needs, the development plan should make very clear that subject to satisfying normal planning considerations.....the planning authority will look favourably upon an applicant’s proposal for an individual house in a rural area where that applicant comes within the development plan definition of need.”
- Section 4.4- Access dealing with 'Roadside Boundaries' states-

“The removal of existing roadside boundaries, except to the extent that this is needed for a new entrance, should be avoided where at all possible except

where required for traffic safety purposes. Roadside boundaries, whether hedgerows, sod and stone bank, stone wall or other boundaries, provide important features that are elements of both the landscape and ecology of rural areas. The retention of such boundary treatments assists in absorbing new rural housing into its surrounding and should generally be encouraged. Occasionally, the removal of substantial lengths of roadside boundaries is proposed as part of an element of improving visibility at the junction of a new entrance onto a road. Where an alternative site is available and otherwise suitable, applicants and planning authorities should consider such alternative on a basis that avoids the necessity for widespread boundary removal.

6.2.2. EPA Code of Practice Wastewater Treatment and Disposal Systems Serving Single Houses (2021)

6.3. Clare County Development Plan 2017-23 as varied

6.3.1. Section 3.2.5 deals with Single Housing in the Countryside and sets out 'Rural Area Types' as required by the 2005 SRHG. It distinguishes between-

1. Rural areas under Strong Urban Pressure
2. Rural areas that are structurally weak or with a strong agricultural economic base

With specific reference to the latter section 3.2.5 emphasises-

"...development pressure on sensitive scenic and coastal areas of the County must be addressed given that there is limited capacity to accommodate individual houses in these areas. These areas include the Burren, Loop Head, the Atlantic Coastline, Slieve Aughty, Lough Derg, and the Shannon Estuary. They are collectively known as Heritage Landscapes...."

In order to respond to the challenges outlined above and deliver on the requirements of the Sustainable Rural Housing Guidelines, Section 3.2.5 of the Plan proposes a different policy response for each of the following:

- a. New single houses in the countryside within the 'Areas of Special Control'
- b. New single houses in the countryside outside the 'Areas of Special Control'

- 6.3.2. Map 3b of the Development Plan identifies the application site as within an 'Area of Special Control' i.e. within a 'Heritage Landscape'.
- 6.3.3. CDP3.11 Development Plan Objective: New Single Houses in the Countryside within the 'Areas of Special Control' states-

It is an objective of the Development Plan:

a) In the parts of the countryside within the 'Areas of Special Control' i.e.:

- *Areas under Strong Urban Pressure (See chapter 17);*
- *Heritage Landscapes (See Chapter 13);*
- *Sites accessed from Scenic Routes (See Chapter 13 and Appendix 5).*

To permit a new single house for the permanent occupation of an Applicant who falls within one of the Categories A or B or C¹ below and meets the necessary criteria.

b) To ensure compliance with all relevant legislation as outlined in Objective CDP2.1 and have regard to the County Clare House Design Guide, in particular with respect to siting and boundary treatment.

Note: Where the proposed site is accessed from a National route or certain Regional routes, the proposal must in addition to compliance with this objective, also be subject to compliance with objectives CDP8.4 and 8.5 as set out in Chapter 8.

- 6.3.4. CDP13.5 Development Plan Objective: Heritage Landscapes.

It is an objective of the Development Plan: To require that all proposed developments in Heritage Landscapes demonstrate that every effort has been made to reduce visual impact. This must be demonstrated for all aspects of the proposal – from site selection through to details of siting and design. All other relevant provisions of the Development Plan must be complied with.

All proposed developments in these areas will be required to demonstrate:

¹ Category A – Local Rural Person (which includes 3 criteria)
Category B – Persons working full time or part-time in rural areas.
Category C – Exceptional Health and / or family circumstances.

- *That sites have been selected to avoid visually prominent locations;*
- *That site layouts avail of existing topography and vegetation to minimise visibility from scenic routes, walking trails, public amenities and roads;*
- *That design for buildings and structures minimise height and visual contrast through careful choice of forms, finishes and colour and that any site works seek to reduce the visual impact of the development*

6.3.5. CDP13.7 Development Plan Objective: Scenic Routes

6.3.6. Appendix 1 – Development Management Guidelines where the following is relevant:

- A1.3.1 – Rural Residential- Development which deals with matters relating to siting and design, road frontage, plot size and wastewater treatment systems.
- A1.9.2 Sight Distances methodology- e.g. 160m for design speed of 85kph, 90m for 60kph and 70 for 50kph

6.3.7. Appendix 5- Scenic Routes

- The R487 from Kilbaha, through Cross and onto Kilkee is identified as a scenic route in Map C Landscape Designation of the County Development Plan. This is also shown in map 13A of the Landscape Designations of the main Development Plan document. The application site is located c. 2km south of the R487.

6.4. **Natural Heritage Designations**

The site is located-

- 500m north west of the Lower River Shannon SAC (002165)
- 7 km west of the River Shannon and River Fergus Estuaries SPA (004077)

6.5. **EIA Screening**

6.5.1. One house in this rural area is not of a 'class' requiring EIA.

7.0 The Appeal

7.1. Grounds of Appeal

One first party appeal has been received and can be summarised as follows-

- The applicant could have addressed the refusal through further information.
- The applicant does satisfy rural housing policy. He has lived in the immediate area since 2002 having to dispose of his home in 2010 (PI ref 01-1585) for detailed personal reasons and moved back in with his parents. Land registry details are submitted showing details of the new owner for his previous home.
- The site is suitable for safe disposal of wastewater as detailed in the report submitted by the applicants Environmental Scientist.
- The design of the proposed house has been revised to reduce visual impact.
- SAC concerns are addressed by the response to wastewater disposal.
- There is a seriously dangerous bend in the road at the site. By removing and recessing the existing boundary would be off benefit to public safety. Actual speeds along this section of road are reduced by the road width, poor visibility and alignment issues. These negate the need for greater sight distances.

7.2. Planning Authority Response

The Planning Authority's response can be summarised as follows:

- There are serious concerns regarding the proposal to treat and dispose of wastewater. A report from the Council Executive Environmental Scientist is submitted and concludes the appeal information does not change their observations or recommendations.

7.3. Observations

- None

8.0 Assessment

8.1. Introduction

8.1.1. I have examined the application details and all other documentation on file, including the submissions received in relation to the Appeal. I have inspected the site and have had regard to relevant local/regional/national policies and guidance.

8.1.2. I am satisfied the substantive issues arising from the grounds of this first party Appeal relate to the following matters only-

- Refusal Reason 1- Rural Housing Need and material contravention of objective CDP 3.11 of the CDP
- Refusal Reason 2- Wastewater treatment and disposal
- Refusal Reason 3- Visual Impact and design
- Refusal Reason 4 and Appropriate Assessment
- Refusal Reason 5- Traffic hazard

8.2. Refusal Reason 1- Rural Housing Need

8.2.1. National Policy Objective 19 (NPO19) of the National Planning Framework (NPF) seeks to facilitate the provision of single housing in rural areas that are **not** under urban influence based on siting and design criteria for rural housing in statutory guidelines and plans, having regard to the viability of smaller towns and rural settlements.

8.2.2. The Sustainable Rural Housing Guidelines, 2005 (SRHG) detail circumstances for which a genuine housing need might apply and include persons who are an intrinsic part of the rural community and persons working full time or part time in rural areas. Section 3.3.1 sets out how policy responses should have regard to 'landscape character' appropriate location and siting of rural housing.

8.2.3. Section 3.2.5 of the County Development Plan (CDP) deals with 'Single Housing in the Countryside'. Section 13.3.2 'Living Landscape Types' proposes that planning policies for rural areas in be integrated by considering the County to comprise of types of landscapes including 'Heritage Landscapes'. These policy provisions clearly

demonstrate the Council have had regard to the provisions of the SRHG in the formulation of its policies and objectives on rural housing and landscape character.

- 8.2.4. The application site is located in a rural area which has been categorised and identified in section 3.2.5 and Map 3b of the CDP as within an 'Area of Special Control' by virtue of being located within a 'Heritage Landscape'. I consider this a 'siting and design criteria' for rural housing in the statutory CDP as per NPO19. Accordingly applications in such locations are subject to the provisions of Objective CDP3.11 of the CDP.
- 8.2.5. The Planning Authority's first refusal reason considers the applicant does not come within the CDP's rural housing need criteria and would therefore materially contravene Objective CDP 3.11. They also detail the proposal will conflict with the provisions of the Sustainable Rural Housing Guidelines 2005 (SRHG).
- 8.2.6. The applicant argues in the appeal that he has lived in the adjacent dwelling from 2002 before moving in to his parents adjoining family home in 2011. He lived in his original home which was permitted to him under 01/1585 before having to dispose of his original home for personal reasons with land registry details submitted in support of this (03/03/22) i.e. additional information submitted at Extension of Time stage.
- 8.2.7. The Council's provisions for permitting 'New Single Houses in the Countryside within the 'Areas of Special Control' and in this instance a 'Heritage Landscape' are set out in Objective CDP3.11. Such persons must falls within the detailed criteria for Categories A or B or C i.e. they must be one of –
- A. Local Rural Person (which includes 3 criteria in itself)
 - B. Persons working full time or part-time in rural areas.
 - C. Exceptional Health and / or family circumstances.
- 8.2.8. Part 2 of the planning application form seeks information pertinent to applications for houses in rural area. Part 2 (a) details the Applicant is seeking a permanent residence and is the landowner. Part 2 (b) confirms the Applicant owned the house next door (01/1585) which was sold in 2011. It also confirms he currently lives with his mother in the family home. It details his previous places of residence in the same townland area since 2002. Question 4 details he work as a 'Sales Director' and works from home. Other than the land registry details submitted on the 03/03/22

there is no other information on the file in support of the applicants compliance with rural housing policy.

- 8.2.9. The final question on the form seeks a declaration from the Applicant confirming all the information is correct and accurate. The declaration signature appears to be that of the Applicant's agent. The Planning Authority have validated the application and in the absence of information to the contrary it is appropriate to consider the file based on the information declared and on file.
- 8.2.10. Based on the limited information on file the applicant may very well meet the criteria of 'local rural person' in the 'local rural area'. However there is no typical documentation on file to support what is stated in the application form e.g. birth certificate, documentary evidence to show where he has lived and for how long he lived there and other information demonstrating a social or economic connection to the area etc. In this regard there is not even a map identifying the location of his current residence. The 'Site Map' drawing does show the location of his 'former family home now sold'.
- 8.2.11. Notwithstanding the above the CDP also requires the applicant to have a 'Local Rural Housing Need' which is defined in the CDP as *'a person who does not or has not ever owned a house in the surrounding rural area (except in exceptional circumstances) and has the need for a dwelling for their own permanent occupation.*
- 8.2.12. The Applicant has clearly detailed in the application, the additional information submitted Extension of Time stage and in the appeal that he obtained planning permission under 01/1585 but sold that house in 2011 for personal reasons. Therefore he can only be considered to have a 'Local Rural Housing Need' in 'exceptional circumstances' as per the CDP.
- 8.2.13. As detailed in section 8.2.7 above there are three categories a person may comply with. The applicant has not sought to comply with Category B- Persons working full time or part-time in rural areas and I note he has indicated in the application form he is 'Sales Director' In terms of Category C consideration can be given to 'Exceptional Health and/or Family Circumstances'.
- 8.2.14. The Land Registry documentation submitted on the 03/03/22 supports the applicants contention that the adjoining property was sold in 2011. The applicant has detailed the reason for this throughout the application and appeal but there is no

documentary information on file to support this. Notwithstanding the reason given for the sale of the house, the applicant has not put forward an exceptional 'Health and/or Family Circumstance' as per those described in the criteria for Category C or any conclusive information in support of same. I also note the provisions of the SRHG do not provide for 'Family Circumstances' nor do they include for the reason the applicant has provided for selling his previous home in this local area. I also do not consider the reason provided to be an exceptional circumstance to permit a second house to the same applicant in the same local rural area.

- 8.2.15. Having considered all of the above I am satisfied that the applicant has not demonstrated compliance with Objective CDP 3.11 of the Clare County Development Plan 2017-23, the provisions of the SRHG 2005 and accordingly to permit the proposed development would be contrary to National Policy Objective 19 of the National Planning Framework, the SRHG and Objective CDP 3.11 of the CDP. This application should be **refused**.

8.3. **Refusal Reason 2- Wastewater Treatment and Disposal**

- 8.3.1. The Planning Authority's second refusal considers the application has not demonstrated that wastewater generated within the site can be treated or dispersed on this site in a manner that would not result in environmental pollution and would therefore represent an unacceptable risk of pollution to the environment due to potential impacts on groundwater and on the surface water network.
- 8.3.2. The Council's Environment Report dated 02/11/21 discusses the Site Characterisation Report (SCR) submitted by the applicant and highlights omissions from the submitted drawings including identifying trial hole and percolation test holes, adjacent watercourses, cross sectional drawings of the site and proposed layout of treatment system proposed. They also consider reference to product brochures as not adequate. The report considers the proposal does not allow for seasonal water table variability and that the variability of soil type on the site is a concern with Gleys being very poorly draining. The percolation tests results are untypical of such soils. The report refers to issues highlighted at the site with previous applications and concludes that the site is deemed unsuitable.

- 8.3.3. The Appellant's have not specifically addressed the Council's concerns in their Appeal but remain adamant that the site is perfectly suitable. The Appeal is accompanied by a report from the Site Assessor who details the Council's concern relates to previous application 09/102. The Council report for that application accompanies the appeal. The Assessor details the 2009 Environmental Report appears to be based on a visual assessment only. The Assessor argues that subsoils and soil conditions as well as draining properties can vary extremely at short distances. The Code of Practise (CoP) asserts that hydraulic properties of soils can only be tested by conducting a physical test and excavating trial holes etc. He argues it is common practise to excavate few trial holes to find the most favourable drainage properties and it is common that subsoils in the same fields can vary. The SCR under 09/102 resulted in a T-Value of 5 min/25mm and was suitable for discharge to ground as per the then CoP. The subject SCR was considered under the EPA's CoP 2021 and the outcome was 7.49/25mm which is similar to the 2009 result. Four trial holes were dug at the site and they showed that subsoil was not consistent with the southwestern corner most favourable. The report of the assessor concludes that the results of the 2009 SCR were reproduced 12 years later and the findings of a visual assessment should not overrule sound scientific findings.
- 8.3.4. The Planning Authority's response to the appeal includes an updated submission from their Environment Section which details the additional information submitted in relation to the SCR or wastewater treatment proposal do not change their observations or recommendations.
- 8.3.5. During my site inspection I was able to access the site, which I found was generally firm underfoot and consistent with the Assessor' visual assessment as detailed in section 3.0 of the SCR. I also note the assessor details that bracken and rushes grow through the site (Page 27) and this was evident. The CoP (Page 102) details bracken is an indicator of dry conditions with rushes clearly indicative of wet conditions. It is clear the subsoil conditions of this site are complex.
- 8.3.6. Section 1 (Page 1) of the SCR details 4 trial holes were excavated on the site. Page 22 of the SCR, Figure 14 identifies the location of the four trial holes and the three

sets of surface and subsurface test holes however this drawing is not scaled². Photographs of the three other trial holes and their soil heaps are not submitted. I walked the site and could not identify the exact locations for any trial hole or test holes. This is likely due to the considerable time that has passed since the site assessor carried out testing of the site in May 2021. Accordingly, it is always prudent that good quality photographs (including landmarks and legible dimensions for hole depths etc) demonstrating what is stated in the submitted SCR's actually accompanies the SCR and are reflective of the site and test conditions.

- 8.3.7. Page 23-27 of the SCR includes photographs of the Trial and Test holes for the purpose of the site assessment, but it is difficult to ascertain detailed information in relation to the site, the location of the holes etc. from the pictures. I note the non-scaled drawing on page 22 does provide some indication but, I cannot tell or estimate the depth of the trial hole from the photo supplied or if it confirms what is recorded in section 3.2 of the SCR.
- 8.3.8. One of the main reasons for testing a site is to identify the most appropriate solution for the specific site conditions to treat and dispose of wastewater safely. In this context, I would entirely agree with the Site Assessor that different subsoil and soil types can be encountered within the same site and in particular I note he has highlighted poor Gley soils in other trial holes on this site. However there is little evidence of the other trial holes e.g. photographs of the holes and soil heaps etc confirming why they were not deemed suitable and in order to confirm adequate testing of the site occurred especially on such a difficult site like this, where Gley soils were encountered.
- 8.3.9. It is not always feasible for Planning Authority's or Inspectors from the Board to inspect open trial or test holes and for this reason the information provided by the Assessors is paramount including photographs of the trial holes, depths and the soil heaps as well as scaled drawings which should include for drainage ditches as identified by the site assessor in section 3.0 of the SCR. Page 23, Figure 15 is titled 'surface water proximity' and drainage ditches in the area of the site are not identified despite being indicated by the assessor at the visual inspection stage.

² Page 98 of the EPA Code of Practice details maps should be appended to the SCR with certain information including- scaled sketch of site showing measurements to Trial Hole location etc., Photographs of the trial hole, test holes and site including landmarks (date and time referenced)

- 8.3.10. The Assessor has provided the previous SCR for the site (from 2009) in Appendix 1 of the subject SCR. The submitted layout drawing for that SCR (Page 34) shows the trial and test holes generally in the south western corner of the site and these would appear to align closely to that of the proposed 'Trial Hole used for Characterisation' in the subject appeal. The Trial hole section of the SCR (page 30) for the previous application details it was dug to 2.3m with no water table encountered at 1.9m. This differs substantially from the subject appeal in which bedrock was encountered at 1.67m with the water table indicated at 1.65m. Furthermore, section 2.1 (Page 29) of the 2009 SCR identifies surface waters are at risk, the presence of drainage ditches (along boundaries) and these ditches suggest impeded drainage.
- 8.3.11. While I acknowledge soil and subsoil conditions can vary across sites within the same field, I would expect the depths of bedrock and water table or evidence of mottling and location of drainage ditches to be very similar if not the same between two SCR's which have generally been carried out in the same area. In this regard there are significant unexplained discrepancies between the trial holes of the subject appeal and the previous trial holes from 2009.
- 8.3.12. Having considered these unexplained discrepancies, the extreme ground water vulnerability of the site, the lack of clear photographic evidence supporting the findings of the SCR, the very evident poor drainage conditions across the site as a whole in which the SCR identifies as Gley soils, the apparent presence of unidentified drainage ditches in the area and the fast draining speeds recorded in the percolation tests of the subject appeal and the 2009 SCR, I tend to share the concerns of the Planning Authority's Environment Section and accordingly I am reluctant to recommend a grant of permission.
- 8.3.13. In these circumstances and noting existing development in the vicinity of the site I am not satisfied the proposed development would not significantly and negatively impact on the environment in the area including both ground and surface waters. The proposal would result in an excessive proliferation and concentration of such developments in the area and would be prejudicial to public health. This application should be **refused**.

8.4. Refusal Reason 3- Visual Impact and Design

- 8.4.1. The Planning Authority's third refusal reason relates to the sites location within a designated 'Heritage Landscape' as per Development Plan Objective CDP13.5, the sites prominent coastal location and its limited natural screening.
- 8.4.2. The applicant argues in the appeal that they revised the design of the proposal to reduce the impact of the dwelling by reducing the ridge height and omission of the first floor.
- 8.4.3. The applicants original design proposal (14/09/21) was for a 6.2m high house with first floor accommodation and a proposed finished floor level indicated as 0.5m higher than the public road.
- 8.4.4. Following the submission of an Extension of Time request the applicant revised the design of the dwelling (03/03/22) to single storey c. 5.7m in height with the finished floor level remaining 0.5m above the public road.
- 8.4.5. I acknowledge the proximity of the site to Rinevalla Bay, the coastline to the south of the site and the provisions of objective CDP 13.5 for 'Heritage Landscapes'. I have also considered the sites location c. 2km south of a designated 'Scenic Route' from which the proposal would not have a significant visual impact.
- 8.4.6. It can be argued that the original proposed design does not comply with objective CDP 13.5 and the submission of a revised design with a lower ridge height only supports this. However having inspected the site, I do not consider it to be a visually prominent location and both house designs are of relatively simple design with some traditional design features. Both are generally in keeping with the existing development pattern in the area.
- 8.4.7. However, I do have visual amenity concerns in relation to the proposed removal and setting back of c. 105m of existing roadside boundary including mature bund and hedgerow to facilitate the proposed entrance and to provide sight lines. In this regard Objective CDP 13.5 of the CDP clearly requires site layouts to avail of existing vegetation to minimise visibility from 'roads'. The proposed development would significantly widen the road to the front of the site and thereby open the site to public views from the road, notwithstanding the proposal to reinstate the boundary ditch

which would in itself take considerable time to grow. I do not consider this impact can be appropriately mitigated by condition.

- 8.4.8. Section 4.4 of the SRHG deals with 'Access' and in relation to 'Roadside Boundaries' specifically states-

"The removal of existing roadside boundaries, except to the extent that this is needed for a new entrance, should be avoided where at all possible except where required for traffic safety purposes. Roadside boundaries, whether hedgerows, sod and stone bank, stone wall or other boundaries, provide important features that are elements of both the landscape and ecology of rural areas. The retention of such boundary treatments assists in absorbing new rural housing into its surrounding and should generally be encouraged.

- 8.4.9. I acknowledge the SRHG does detail that the removal of substantial lengths of roadside boundaries may be proposed as part of an element of improving visibility at the junction of a new entrance onto a road. However, the Guidelines also details that where alternative sites are available and otherwise suitable, applicants and planning authorities should consider such alternatives on a basis that avoids the necessity for widespread boundary removal.

- 8.4.10. The 'Site Map' drawing submitted with the application and appeal indicates the lands to the immediate east of the application site are within the applicants landholding. There is no indication in the information submitted with the application or appeal that consideration has been given to providing an entrance from the existing roadside boundary or from the other lands under the applicants control from which the removal of substantial hedgerow may not be required.

- 8.4.11. The site is located within an area designated a 'Heritage Landscape' and Objective CDP 13.5 of the CDP requires site layouts to avail of existing vegetation to minimise visibility from roads. The proposal to remove the full roadside boundary to provide an entrance would be contrary to this Objective and also the provisions of the SRHG. In this context the existing mature roadside boundary should be retained as much as possible save for the entrance which could be located outside of the site as proposed but the Applicants landholding.

- 8.4.12. Having considered all of the above, I share the Planning Authorities concerns in relation to the visual impact of the development on this 'Heritage Landscape' with

specific regard to the removal of a substantial length of existing mature roadside boundary thereby reducing the ability of the proposed development to be absorbed into the 'Heritage Landscape'. The proposal would be contrary to Objective CDP 13.5 and the provisions of the SRHG. This application should be **refused**.

8.5. Refusal Reason 4 and Appropriate Assessment (AA)

- 8.5.1. The Planning Authority's fourth refusal reason details they are not satisfied that the proposed development, either individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lower River Shannon SAC, in view of the conservation objectives of the site. Their concern in this regard relates to the information submitted in terms of wastewater treatment and disposal and their findings that it is inadequate. In their Screening for AA they determined that the wastewater elements of the proposal are located within 500m of watercourses and that compliance with the EPA Code of Practice has not been demonstrated. Therefore they conclude that the potential for significant effects to European Sites cannot be ruled out.
- 8.5.2. The Applicant detail in their appeal that they have answered this refusal reason in their submission for refusal reason 2.
- 8.5.3. Notwithstanding my own assessment of refusal reason 2 it is appropriate to carry out AA Screening of the proposed development.
- 8.5.4. **Introduction**
- a) A screening report for AA was not submitted with this application or appeal. Therefore, this screening assessment has been carried de-novo.
 - b) Screening for AA was carried out by the Planning Authority. The subject site was identified as 0.4km from the Lower River Shannon SAC (Site Code: 002165) and the proposal is considered to potentially impact on watercourse and terrestrial habitats & species. The potential impact was identified as resulting from non-compliance with the EPA CoP for wastewater treatment and disposal. The Planning Authority concluded the potential for significant effects cannot be ruled out.

8.5.5. **Stage 1 Screening**

- a) The project is not directly connected with or necessary to the management of a European Site and therefore it needs to be determined if the development is likely to have significant effects on European sites. The proposal is examined in relation to possible interaction with European sites i.e. SAC's and SPA's to assess whether it may give rise to significant effects on such European Sites.

8.5.6. **The Proposed Development and Receiving Environment**

- a) The proposed development comprises of one house, a vehicular entrance, setting back of existing roadside boundary and installation of a wastewater treatment system with polishing filter.
- b) The site is located an existing rural area characterised by the random dispersal of one off housing along the local road. The site can be accessed by an existing agricultural gate to its north west but is not in any apparent agricultural use.
- c) The site is not located within or adjoining a designated European site.

8.5.7. **European Sites**

- a) Given the location of the site, the nature and scale of the proposed development, I consider the designated European site as set out in Table 1 below to be within the zone of influence of the subject site.
- b) I am satisfied that other European sites proximate to the appeal site (including those identified in section 6.4 above) can be 'screened out' on the basis that significant impacts on such European sites can be ruled out, either as a result of the separation distance from the appeal site, the extent of marine waters or given the absence of any direct or indirect hydrological or other evident pathway from the appeal site to European Sites.

European Site and code	Qualifying Interests	Distance
Lower River Shannon SAC	1029 Freshwater Pearl Mussel <i>Margaritifera</i> 1095 Sea Lamprey <i>Petromyzon marinus</i> 1096 Brook Lamprey <i>Lampetra planeri</i> 1099 River Lamprey <i>Lampetra fluviatilis</i>	c. 500m south west of the site

002165	1106 Atlantic Salmon <i>Salmo salar</i> (only in fresh water) 1110 Sandbanks which are slightly covered by sea water all the time 1130 Estuaries 1140 Mudflats and sandflats not covered by seawater at low tide 1150 *Coastal lagoons 1160 Large shallow inlets and bays 1170 Reefs 1220 Perennial vegetation of stony banks 1230 Vegetated sea cliffs of the Atlantic and Baltic coasts 1310 <i>Salicornia</i> and other annuals colonizing mud and sand 1330 Atlantic salt meadows (<i>Glauco-Puccinellietalia maritima</i>) 1349 Bottlenose Dolphin <i>Tursiops truncatus</i> 1355 Otter <i>Lutra</i> 1410 Mediterranean salt meadows (<i>Juncetalia maritimi</i>) 3260 Water courses of plain to montane levels with the <i>Ranunculus fluitantis</i> and <i>Callitriche-Batrachion</i> vegetation 6410 <i>Molinia</i> meadows on calcareous, peaty or clayey-silt-laden soils (<i>Molinion caeruleae</i>) 91E0 *Alluvial forests with <i>Alnus glutinosa</i> and <i>Fraxinus excelsior</i> (<i>Alno-Padion</i> , <i>Alnion incanae</i> , <i>Salicion albae</i>)	
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c) Having considered the above and the NPWS Conservation Objective Series and their associated Mapping³ I note-

- a. Map 3 identifies [1110] Sandbanks which lie off the shore to the south of the site,
- b. Map 7 identifies [1160] Large shallow inlets and bays as occurring directly along the shoreline ranging as close as 0.4-0.6 km from the sites southern and eastern boundaries.
- c. Map 8 identifies [1170] Reefs are as occurring directly along the shoreline ranging as close as 0.4-0.6 km from the sites southern and eastern boundaries. Furthermore Map 9 identifies Furoid-dominated intertidal reef community complex as occurring directly along the shoreline ranging as close as 0.4-0.6 km from the sites southern and eastern boundaries.
- d. Map 11 identifies [1230] Vegetated sea cliffs of the Atlantic and Baltic coasts (Kilcogher Site id 01007) as occurring directly along the shoreline c. 0.6 km from the sites southern boundaries and further west.

³ https://www.npws.ie/sites/default/files/protected-sites/conservation_objectives/CO002165.pdf

- e. Map 16 identifies [1349] Bottlenose Dolphin - *Tursiops truncatus* Critical Habitat as occurring directly along the shoreline ranging as close as 0.4-0.6 km from the sites southern and eastern boundaries.
- f. Map 17 identifies [1355] Otter - *Lutra lutra*'s 250m Commuting Buffer as occurring directly along the shoreline ranging as close as 0.4-0.6 km from the sites southern and eastern boundaries

8.5.8. ***Test of Likely Significant Effects***

- a. The project is not directly connected to or necessary to the management of any European site. The proposal is examined in relation to possible interaction with European sites to assess whether it may give rise to significant effects in view of the conservation objectives of those sites.
- b. Based on the source-pathway-receptor model and having regard to the existing use of the site, the nature of the proposed development, the scale of works proposed, the proximity of the identified European sites and having regard to the identified conditions underpinning European Site integrity and implications for this site, the following are considered for examination in terms of likely significant effects on European sites-
 - Impact on surface water quality and hydrological connectivity to the SAC

8.5.9. ***Potential Effects***

- a. The application proposes a tertiary treatment system and infiltration/treatment area (soil polishing filter) with final discharge to groundwater.
- b. As detailed in section 8.3 above the SCR for this application identifies gley poorly draining soils within the site with drainage ditches as common in the area. Appendix 1 of the SCR provides a previously carried out SCR on the site from 2009 which details soils in the area have restricted drainage, surface waters are at risk and the presence of drainage ditches.
- c. The presence of these drainage ditches are not identified on the details submitted with the application or appeal. Noting the proximity of the site to the

SAC, I cannot determine the extent of hydrological connectivity if any between the application site and the European site which may be direct or indirect.

- d. Section 8.3 has identified discrepancies between the 2009 SCR and the 2021 SCR which have not being explained and include significantly different bedrock and water table depths despite appearing to be carried out in the same general area. Both SCR's detail the poorly draining nature of the site save for the area of the trial holes. Gley soils are identified within the site. In the absence of an explanation for these discrepancies it is difficult to conclude that wastewater would be capable of safe discharge to groundwater. In such circumstances there remains a risk of untreated wastewater finding alternative pathways including discharge to surface waters and drainage ditches which may directly or indirectly discharge to the SAC.

8.5.10. ***In-combination Impacts***

- a) The Clare County Development Plan 2017-23 as varied was subject to AA.
- b) I do not consider there to be any other specific recent or permitted planning applications in the immediate area that could have in-combination effects with the proposed development on the identified European Site.
- c) I note the proximity of other existing houses which are likely to dispose of treated wastewater within their own sites.

8.5.11. ***Conclusion***

- a. The proposed development was considered in light of the requirements of Section 177U of the Planning and Development Act 2000 as amended.
- b. Having carried out Screening for AA of the project and in terms of potential impacts associated with the proposed development, I cannot conclude that there will be no adverse impacts to the integrity of the European Site.
- c. As no critical assessment was undertaken in terms of hydrological connectivity and because of unexplained discrepancies and shortcomings in the submitted SCR, where poorly draining soils are evident throughout the site, I am not satisfied that adequately treated wastewater will not discharge to some extent to surface waters and therefore such waters could potentially directly or indirectly impair water quality in the SAC. As such, and applying the

precautionary principle, significant effects on the Lower River Shannon SAC (Site Code: 002165) cannot be ruled out.

- d. On the basis of the information provided with the application and appeal, and in the absence of a detailed Appropriate Assessment Screening or Natura Impact Statement from the applicants, the Board cannot be satisfied that the proposed development individually, or in combination with other plans or projects would not be likely to have a significant effect on Lower River Shannon SAC (Site Code: 002165), in view of the site's Conservation Objectives. I consider that the Board is precluded from granting permission for the proposed development in these circumstances.

8.6. Refusal Reason 5- Traffic hazard

- 8.6.1. The Planning Authority's fifth refusal reason considers the proposed entrance is not adequate in terms of traffic safety due to inadequate sight distances and would result in a traffic hazard endangering public safety. The Applicant argues in the appeal that there is a seriously dangerous blind spot/bend and by removing and recessing the existing boundary/ ditch a huge benefit to all road users would be provided. They detail that actual speeds along this section are reduced due to the road width and poor visibility and alignment issues.
- 8.6.2. The Planning Authority requirements for proposed entrances are detailed in Appendix 1 section A1.9.2. This sets out the methodology for creating an 'envelope of visibility' from entrances. The Applicant's drawing submitted with the application and appeal do not clearly show the envelope of visibility required. The drawing does however appear to show 70m of sightlines in both directions but these are not to the near road edge. They also require setting back the existing roadside boundary for c. 105m across the frontage of the site thereby significantly widening the road at this section. I do not consider this existing boundary removal and setback as acceptable in this 'Heritage Landscape' as per section 8.4 above.
- 8.6.3. Having visited the site, I do not consider the bend in the road to the front of the site to be as seriously dangerous as described in the appeal. The road to the front of the site is a narrow local road with speed limits very unlikely to reach the 80kph speed limit for such roads. The existing bend in the road to the front of the site acts as a

natural traffic calming measure for the design speed and actual likely speed along this section of road. In this context I would consider 70m of sight lines in both directions may be sufficient with speeds not likely to exceed 60 kph as per the CDP.

8.6.4. However, the applicant proposes achieving this with a significant removal of existing roadside boundary that would straighten the road for a considerable length which would then increase the likelihood of speeds in excess of the existing design speed and thereby may require a greater sight distance as per the development plan standards.

8.6.5. Having considered all of the above and noting other land within the applicants control to the immediate east of the site and the other substantive reasons to refuse the proposal as set out in this assessment, I consider the applicant has not demonstrated that adequate sightlines for the design speed of the road can be achieved from the recessed entrance as proposed and therefore the proposed development may create a traffic hazard. This application should be **refused**.

9.0 Recommendation

9.1. I recommend that permission is refused for the following reasons-

10.0 Reasons and Considerations

1. National Policy Objective 19 of the National Planning Framework facilitates the provision of single housing in the countryside in rural areas considered 'elsewhere' from those under urban influence, based on siting and design criteria for rural housing in statutory guidelines and plans. In this regard, the location of the proposed development is 'sited' in an area specifically identified as an 'Area of Special Planning Control' i.e. within a designated 'Heritage Landscape' as per Objective CDP 3.11 of the Clare County Development 2017-2023 as varied. It is considered that the proposed development, by reason of this siting and having regard to the viability of smaller towns and rural settlements, would be contrary to National Policy Objective 19 of the National Planning Framework, contrary to the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (DoEHLG), 2005 and contrary to Development Plan Objective CDP 3.11 of the Clare

County Development Plan 2017-2023 as varied. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

2. Having regard to the information on file and as set out in the Site Characterisation Report submitted with the application and its Appendix, including discrepancies identified within that information, and the information provided in the appeal, the Board cannot be satisfied that the proposed development, taken in conjunction with existing development in the vicinity, would not significantly and negatively impact on the environment including both ground and surface waters in the area and would result in an excessive proliferation and concentration of developments in the area served by wastewater treatment systems. It is considered therefore, that the proposed development would be prejudicial to public health.

3. The site of the proposed development is located within a 'Heritage Landscape' as set out in the Clare County Development Plan 2017-23 as varied, where Objective CDP 13.5 of the plan requires that all proposed developments demonstrate that every effort has been made to reduce visual impact and that such developments demonstrate that site layouts avail of existing vegetation to minimise visibility from roads. Furthermore section 4.4 of the Sustainable Rural Housing Guidelines for Planning Authorities (DoEHLG), 2005 encourages the retention of roadside boundaries to assist in absorbing new rural housing into its surroundings. Having regard to the proposed removal of a substantial length of existing roadside boundary across the frontage of the site and public road and the proposal to reinstate a new boundary ditch set back from the existing road edge, it is considered that the proposed development would have a negative visual impact on the area when viewed from the public road, would seriously injure the visual amenities of the area, would fail to be adequately absorbed and integrated into the 'Heritage Landscape', would militate against the preservation of the rural environment and would set an undesirable precedent for other such development in the

vicinity. The proposed development would, therefore, be contrary to Objective CDP13.5 of the Clare County Development Plan, 2017-2023, as varied, the provisions of the Sustainable Rural Housing Guidelines for Planning Authorities (DoEHLG), 2005 and the proper planning and sustainable development of the area.

4. On the basis of the information provided in connection with the planning application and the appeal, the Board is not satisfied, that the proposed development demonstrates, that it, individually or in combination with other plans or projects, would not be likely to have a significant effect on the Lower River Shannon Special Area of Conservation (Site Code: 002165). In such circumstances, the Board is precluded from granting permission for the proposed development.

5. It is considered that the proposed development would endanger public safety by reason of a traffic hazard because of the traffic turning movements the development would generate on a public road at a point where proposed sightlines have not been adequately demonstrated and which would require the unacceptable removal of a substantial length of existing roadside boundary that would seriously injure the visual amenities of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Adrian Ormsby
Planning Inspector

21st of March 2023